IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 275 OF 2003

Kusumben Kantilal Shah & Anr ...Petitioners

Versus

Sharad Anantrai Laxmichand Shah and Others ...Respondents

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Mr. D.S. Parikh with Gautam Panchal i/b M/s. Bilawala and Co. for Petitioners

Mr. Vivek Walawalkar i/b M/s Mahesh Jain & Co. for Respondent Nos 1 to 5.

Mrs.G.P. Mulekar, A.G.P.for Respondent Nos. 6 to 9.

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CORAM: B. H. MARLAPALLE, J.

DATED: 14TH FEBRUARY, 2005

P. C.:-

1. Heard Mr. Parikh, the learned senior counsel with Mr. Gautam Panchal the learned counsel for the Petitioners, Mr. Walawalkar, the learned counsel for respondent Nos. 1 to 5 and Mrs. Mulekar, the learned A.G.P. for respondent Nos. 6 to 9.

2. It is contended by the petitioners that Special Civil Suit No. 4996 of 1978 was filed by the petitioner No.1 and two others representing M/s. Pannalal Silk Mills Pvt. Ltd., a Company registered under the Indian Companies Act, 1956 for the relief of declaration that they are the owners of land

admeasuring 3287 Sq. yards or 2750 Sq. Mtrs bearing survey No. 139, Hissa No. 1 and 2 (Part) CTS No. 1012 situated in Bhandup village of Taluka Kurla (Bombay Sub-urban district) and in the said suit, Notice of Motion No. 3948 of 1978 was moved for interim orders. The City Civil Court at Mumbai passed an order on 13.3.1980 and made the said Notice of Motion absolute in terms of prayer clause (c) and (d). The substantial relief sought in the Special Civil Suit No. 4996 of 1978 in terms of prayer clause (a) reads as under:-

> " for a declaration that plaintiffs are the owners of land admeasuring 3287 square years i.e. 2750 square meters being Survey No. 139, Hissa No.1 and 2 (part) C.T.S. No. 1012 situated in Bhandup village, Taluka Kurla, Bombay Suburban District, Greater Bombay more particularly descirbed in Schedule No.1 hereto annexed."

. Whereas the prayer clauses (c) and (d) of Notice of Motion No. 3948 of 1978 are reproduced as under, as the said Notice of Motion was made absolute by order dated 13.3.1980 by the City Civil Court at Mumbai.

"c. That pending the hearing and final disposal of the suit for Collector Bombay Suburban district and/or collector Bombay and Bombay Suburban District be restrained by an order prohibiting or them from paying or tendering the payment of compensation which will be awarded under the Land Acquisition Act, 1894 under Inquiry No. IAQ/SR/185 to either the plaintiffs or the defendants or anyone of them as per the award which may be passed in respect of the suit land i.e. land admeausirng 2760 sq. metres situated in Bhandup village, Taluka Kurla Bombay Suburban District at present bearing C.T.S. No.1012, formerly bearing Survey No.139, Hissa No.1 and 2 (Part) Hissa No.2/1, Hissa NO.2/2 Hissa No.1/1, Hissa No.1/2 in the said Inquiry No. LAQ/SR/185.

d) That the Special Land Acquisition Officer (4) Bombay and Bombay

Suburban District be restrained by an order prohibiting him from payment or tendering the payment of compensation which will be awarded under the Land Acquisition Act, 1894 under Inquiry No. IAQ/SR/185 to either the Plaintiffs or the defendants or anyone of them as per the award which may be passed in respect of the suit land i.e. land admeasuring 2760 sq. meters situated in Bhandup village, Taluka Kurla Bombay Suburban district at present bearing C.T.S. No. 1012 formerly bearing survey No. 139, Hissa No.1 and 2 (part) Hissa No.2/1, Hiss No. 2/2, Hissa No.1/1, Hissa No. 1/2, in the said Inquiry No. IAQ/SR/185.

3. It is alleged in this Contempt Petition that the land which is part of the Suit pending before the City Civil Court came to be acquired (partly or fully) for some private Companies and the award amount came to be disbursed on 26.11.98 to the present respondent Nos. 1 to 5 by the Land Acquisition Officer contrary to the injunction order

passed on 13.3.1980. The amount disbursed is to the tune of Rs.91,55,794/-.

4. As stated in para 24 of the petition memo, the petitioners claim to have got the knowledge of the disbursement in September, 2001 and this Contempt Petition has been moved before this Court on or about 16.7.2003 i.e. after more than one year. Section 20 of the Contempt of Courts Act, 1971 states that no Court shall initiate any proceedings of contempt either on its own motion or otherwise after the expiry of the period of one year from the date on which the contempt is alleged to have been committed. If regards be had to these provisions, it is clear that the contempt petition is barred by limitation. The petitioners by the subsequent amendment have set out their contentions that even from the date of knowledge they could not move this petition within one year on account of the difficulties they faced. These averments made in riders B to D of the amended clause 24-A, do not make out a case to treat this Contempt petition within limitations as set out under Section 20 of the Contempt of Courts Act, 1971. The decision in the case of **Pallav Sheth Vs. Custodian and others [(2001) 7 SCC 549]** does not assit the petitioners in this regard.

5. In Special Civil Suit No.4996 of 1978 the said

authorities against whom an order of injunction came to be passed on 13.3.1980 were not impleaded as defendants though the order was obtained against them. Even in the Notice of Motion which was made absolute in terms of prayer clauses (c) and (d), the said Officers were not impleaded as defendants. Pursuant to the order passed by this Court on 6.2.2004, an affidavit in reply has been filed by Datta Bhadakwad, Special Land Acquisition Officer No.2, and as per the said affidavit, the Notification U/sec.4 was issued by the Government of Maharashtra on 24.2.1995 and it was published in the Government Gazette dated 20.4.1995. It was also published in the Marathi Daily "Loksatta" on 13.4.1995 and on the same date it was published in the English Daily "Indian Express". Whereas the notification Under Section 6 of the Land Acquisition Act, 1894 was issued by the Government on 24.7.96 and the same was published in the Government Gazette dated 25.7.1996. It was published in the newspaper on 29.7.1996. Notice U/sec. 9(3) and 9(4) of the Land Acquisition Act came to be issued on 2.6.97 and finally the Land Acquisition Officer passed the award on 23.7.98 and thus, concluded the land acquisition proceedings. The award pertains to the acquisition of land from survey No. 139 (one part) 139 (two parts). The total area covered by the award admeasures 2515 Sq. Mtrs. The Land Acquisition Officer has placed on

record alongwith his affidavit in reply, the 7 x 12 extracts in respect of all the four parts of survey No. 139 and as on 9.3.2004. From the same record it appears that part No. 1/1, 1/2 and 2/2 have been acquired, whereas part No. 2/1 does not seem to be covered by the said acquisition.

6. The petitioners have filed re-joinder and brought on record a copy of the letter dated 18.8.1977, addressed by the Special Acquisition Officer (4) Bombay and Bombay Sub-urban District and addressed to 1) The Proprietors, Bhandup Estate, 2) Shri. Laxmikant Dubibi Shah and 3) M/s Pannalal Silk Mills Pvt. Ltd. They have also brought on record a copy of the notification dated 24.2.1995 issued U/sec.4(1) of the Land Acquisition Act 1894. The Land Acquisition Officer had published the notifications not only in the Government Gazette but also in some of the leading newspapers published from Mumbai. These notifications published U/secs. 4 and 6 of the Land Acquisition Act were in full compliance of the statutory requirements and the petitioners ought to have approached the Land Acquisition Officer or the concerned Officers and brought to their attention the injunction order to be implemented while disbursing the amount under the award dated 23.7.98. They have obviously not done so.

7. The Land Acquisition Officer's affidavit also states that the money has been disbursed on obtaining Indemnity Bonds from Mr. Bhanuchand Laxmichand Shah, Ashwina Bhanuchand Shah, Samir Bhanuchand Shah, Sharad Anantarai Shah and Rajesh Anantrai Shah on 7.9.98. It further states that declarations have also been obtained from Shaila Shailesh Kandar, daughter of Anantrai Shah. It is also informed across the bar that a recovery suit has been filed on the Original side of this Court by the petitioners and registered as Civil Suit No. No. 64 of 2002. Section 30 of the Land Acquisition Act, 1894 states that when the amount of compensation has been settled U/sec. 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court. The petitioners had the remedy of approaching the Collector to refer the dispute as contemplated under Section 30 of the Land Acquisition Act, 1894 to the Court. In addition, as soon as the petitioners got the knowledge purportedly in September, 2001 that the compensation has been released on or about 26.11.98, they could have moved the court below under Order XXXIX Rule 2-A of C.P.C. Nothing of this has been done by the petitioners and in any case their claim regarding the ownership to the land either partly or fully covered by the

acquisition proceedings is pending for adjudication in Special Civil Suit No. 4996 of 1978.

8. There are two more important infirmities in this contempt petition which also come in its way for being entertained. The names of the alleged contemnor Nos. 7 to 9 have not been set out in the petition memo and the officers concerned who allegedly disbursed the amount of compensation on 26.11.1998 were required to be impleaded by name. The properties in respect of which the declaration of ownership has been sought in prayer clause (a) of the plaint, have been further extended by adding some more properties in prayer clause (d) in the Notice of Motion as is obvious from the respective prayer clauses reproduced in para 2 above.

9. In the circumstances as detailed above, it would not be safe to take cognizance of the alleged contempt in this petition and therefore, the same is rejected summarily.